

## 37 Am. Jur. 2d Fraud and Deceit § 66

American Jurisprudence, Second Edition | May 2021 Update

### Fraud and Deceit

George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

#### IV. False Representations

##### B. Necessity that Representation Be of Fact; Opinions

##### 2. Distinctions Between Statements of Fact and Opinion

### § 66. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  11

Some jurisdictions state the test for whether a statement is one of opinion or of fact as whether under the circumstances surrounding the statement, the representation was intended and understood as one of fact as distinguished from one of opinion.<sup>1</sup> Stated alternately, a statement that in form is one of opinion may constitute a “statement of fact” if it may reasonably be understood by the recipient as implying that there are facts to justify the opinion or at least that there are no facts that are incompatible with it.<sup>2</sup>

Other jurisdictions state that whether statements are to be considered as matters of fact or matters of opinion depend on whether the person to whom they are made may rightly rely upon them.<sup>3</sup>

The prevailing perspective, however, appears to be that there is no certain rule which can be applied in order to determine when false representations constitute matters of opinion or matters of fact but that each case must in a large measure be adjudged upon its own facts,<sup>4</sup> taking into consideration the nature of the representation and the meaning of the language used as applied to the subject matter in the light of the surrounding circumstances.<sup>5</sup> Stated similarly, whether a statement is an actionable statement of fact or merely one of opinion often depends on the circumstances and context in which a statement is made,<sup>6</sup> and among the relevant circumstances are the statement's specificity, the speaker's knowledge, the comparative levels of the speaker's and the hearer's knowledge, and whether the statement relates to the present or the future.<sup>7</sup> Under yet another formulation of the rule, the relative knowledge of the parties, their intentions, and all of the surrounding circumstances affect the interpretation which courts put upon representations in determining whether they are representations of fact or opinion.<sup>8</sup>

When it is impossible to determine as a matter of law whether the representation is one of fact or merely the expression of an opinion, the question is generally regarded as one for the jury.<sup>9</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Whether a statement is an actionable statement of fact, as would support a fraud claim, or merely one of opinion often depends on the circumstances in which a statement is made; relevant circumstances include the statement's specificity, the speaker's knowledge, the comparative levels of the speaker's and the hearer's knowledge, and whether the statement relates to the present or the future. [O'Brien v. Daboval](#), 388 S.W.3d 826 (Tex. App. Houston 1st Dist. 2012).

## [END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

- <sup>1</sup> [Omega Engineering, Inc. v. Eastman Kodak Co.](#), 908 F. Supp. 1084, 30 U.C.C. Rep. Serv. 2d 194 (D. Conn. 1995) (applying Connecticut law).
- <sup>2</sup> [McEneaney v. Chestnut Hill Realty Corp.](#), 38 Mass. App. Ct. 573, 650 N.E.2d 93 (1995).
- <sup>3</sup> [Holland Furnace Co. v. Korth](#), 43 Wash. 2d 618, 262 P.2d 772, 41 A.L.R.2d 1166 (1953); [Madison Trust Co. v. Helleckson](#), 216 Wis. 443, 257 N.W. 691, 96 A.L.R. 992 (1934) (statements made to induce a release of liability for wrongful death).  
As to the effect of confidential relationships, generally, see §§ 34 to 39.  
As to reliance, generally, see §§ 231 to 262.
- <sup>4</sup> [Fidelity & Casualty Co. of New York v. J.D. Pittman Tractor Co.](#), 244 Ala. 354, 13 So. 2d 669 (1943); [Foreman & Clark Corp. v. Fallon](#), 3 Cal. 3d 875, 92 Cal. Rptr. 162, 479 P.2d 362 (1971); [Arkoma Basin Exploration Co., Inc. v. FMF Associates 1990-A, Ltd.](#), 249 S.W.3d 380 (Tex. 2008) (applying Virginia law); [Mortarino v. Consultant Engineering Services, Inc.](#), 251 Va. 289, 467 S.E.2d 778 (1996).
- <sup>5</sup> [VNA Plus, Inc. v. Apria Healthcare Group, Inc.](#), 29 F. Supp. 2d 1253 (D. Kan. 1998) (applying Missouri law); [Tate v. Jackson](#), 22 Ill. App. 2d 471, 161 N.E.2d 156 (4th Dist. 1959); [Russo v. Williams](#), 160 Neb. 564, 71 N.W.2d 131 (1955); [Murphy v. McIntosh](#), 199 Va. 254, 99 S.E.2d 585 (1957).
- <sup>6</sup> [Constance v. B.B.C. Development Co.](#), 25 S.W.3d 571 (Mo. Ct. App. W.D. 2000).
- <sup>7</sup> [GJP, Inc. v. Ghosh](#), 251 S.W.3d 854 (Tex. App. Austin 2008).
- <sup>8</sup> [Arkoma Basin Exploration Co., Inc. v. FMF Associates 1990-A, Ltd.](#), 249 S.W.3d 380 (Tex. 2008) (applying Virginia law).
- <sup>9</sup> § 70.